

**Letter of Findings: 65-20191232P
Indiana Oversize/Overweight Proposed Assessment
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department sent Motor Carrier a proposed assessment for multiple oversize/overweight civil penalties for operating while overweight on allowable axle weight and over on total gross weight. At hearing, Motor Carrier established that the proposed assessment failed to meet statutory requirements. Therefore, Motor Carrier's protest is sustained.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Motor Carrier protests the assessment of oversize/overweight civil penalties.

STATEMENT OF FACTS

On April 27, 2018, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for multiple overweight violations. As a result, the Department issued Motor Carrier a proposed assessment for oversize/overweight OS/OW civil penalties. Motor Carrier disagreed with the assessment of penalties and submitted a protest to that effect. This Letter of Findings results. At Motor Carrier's request, the Department held a hearing on this matter. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protests the imposition of penalties imposed against them. The Department based its proposed assessment on a report provided by the ISP. At hearing, Motor Carrier argued that it was assisting with a State of Indiana construction project and did not have control over the milling machine that loaded the vehicle in question. Motor Carrier also provided that there were no scales on the site and that the driver was directed in and out of the site and did not have knowledge of whether the load was overweight.

As a threshold issue, it is Motor Carrier's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, "an owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided

in [IC Art. 9-20]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required but fail to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . ." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 characterizes fees and penalties stemming from IC Art. 9-20 violations as a "listed tax." According to IC § 9-20-18-14.5(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

Motor Carrier contends that the proposed assessment amount is excessive as the cargo in question, pursuant to IC § 9-20-4-1(a)(2), was only 940 pounds over on the drive axle and was under the gross allowable weight. Motor Carrier argues that the Department should issue a warning rather than OS/OW civil penalties or, at most, assess OS/OW civil penalties based on a per pound system. The Department issues amounts as prescribed by IC § 9-20-18-14.5. IC § 9-20-18-14.5(b) authorizes the Department to impose not more than a \$500.00 civil penalty for a first violation and not more than \$1,000.00 for each subsequent violation. The Department does not have statutory authority to implement a penalty system such as Motor Carrier suggests.

In this case, the Department issued Motor Carrier a Permit Violation Civil Penalty for being overweight on the rear tandem and tri axle group in violation of IC § 9-20-4-1. However, Motor Carrier did not possess a permit to violate and the cargo in question was not a divisible load subject to permit. Further, according to the vehicle examination report prepared by ISP, the vehicle's gross weight did not meet the minimum requirements to obtain a permit even if the cargo in question was a divisible load subject to permit. Therefore, while the Department is authorized to issue assessments for overweight penalties under IC § 6-8.1-1-1 and IC § 9-20-18-14.5, Motor Carrier has met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Motor Carrier's protest is sustained.

September 23, 2019

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